

The Victorian Auditor-General's Report 'Managing Landfills': Implications for councils and the EPA

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On 3 September 2014, the Victorian Auditor-General's Office (**VAGO**) released a report (**VAGO Report**) assessing the management of municipal landfills by four councils and the Environmental Protection Authority (**EPA**).

The VAGO Report is the latest in a series of initiatives undertaken since 2009 that have been aimed at reviewing Victoria's management of risks posed by landfills. Following the Ombudsman's Inquiry into the methane gas leak at the Brookland Greens Estate, the EPA conducted a methane gas risk assessment of more than 200 landfills across Victoria³. This involved a desktop screening of landfills which had a lower risk profile and resulted in more detailed assessment of landfill gas risks at selected landfills.

This article provides a brief summary of the VAGO Report and background to the regulation of risks associated with landfills in Victoria, as well outlining VAGO's assessment of both councils' and the EPA's current practices, and recommendations for the future.

Managing landfill risks: the regulatory framework

As noted in the VAGO Report the management of landfill risks in Victoria is primarily regulated by the *Environment Protection Act 1970* (Vic) (**EP Act**). This is supplemented by the EPA's 2004 *Waste Management Policy (Siting, Design and Management of Landfills)* (**WMP**) and the EPA's *Best Practice Environmental Management - Siting, Design, Operation and Rehabilitation of Landfills* 2010 Guideline (**BPEM**).

Occupiers of licensed landfills will be required to meet current regulatory requirements for landfills. However, the EPA has also been applying current policy guidance to manage risks posed by closed landfills constructed to older standards in accordance with its Closed Landfill Guidelines (EPA Publication 1490).

The specific requirements will depend upon the type of landfill site:

Active landfills

- A licence system is administered by the EPA, requiring licence holders to undertake risk assessments, environmental monitoring, environmental auditing and an annual review of compliance with licence conditions.

Closed landfills

- Once closed, owners of licensed landfill sites may be issued remedial notices to ensure that appropriate measures are implemented in the aftercare phase to manage any ongoing risks.

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³ *Assessment of the Potential for Methane Gas Movement from Victorian Landfills* (EPA Publication 1270), February 2009

Exempt landfills

- There are only 36 exempt landfills in Victoria. The EPA can choose to issue notices requiring appropriate management of these landfills if deemed to pose an unacceptable risk to the environment or community.

We note that, since the release of its Closed Landfill Guidelines in 2012, the EPA has been issuing post-closure pollution abatement notices (**PANs**) to occupiers of some closed landfills identified as posing a risk to the environment. Older landfills were not constructed to the same standards as modern landfills. Smaller landfills exempt from licensing are also constructed to different standards and often pose a greater risk to the environment. Landfills which lack an adequate buffer to nearby uses may have a greater risk profile.

Risks associated with landfills

The VAGO Report notes that there are numerous risks associated with landfills, whether the sites are still operational or have been dormant for a number of years. If councils own landfill sites, they will be responsible for managing the relevant risks as mandated by the regulatory framework outlined above. The main areas of risk include:

Environmental

- The most common risk to the environment is the creation of leachate, caused from the breakdown of landfill waste that comes into contact with surface water. Another risk is gas generated by landfill which can affect vegetation and greenhouse gas levels.

Human health

- The movement of landfill gas can cause a range of problems for human health, especially when accumulating in enclosed spaces. These include asphyxiation and explosion. However, health problems caused by landfill risks are considered to be rare.

Amenity

- Strong odours and the poor management of landfill sites can affect the liveability and aesthetics of communities.

Legacy

- Landfill sites constructed to past standards may fall short of the more rigorous requirements that are demanded today, causing problems such as increased levels of gas, leachate and odour. These risks may continue for 30 years plus.

The management of landfill risks by councils

Four councils were audited for the purposes of VAGO's report, being City of Ballarat, East Gippsland Shire Council, Hume City Council and Wyndham City Council. The report found that those councils improved in their management of landfill risks since 2010. However, VAGO found that some risks are still not being adequately addressed.

What the councils have done well:

- the audited councils met the EPA's standards for high-risk sites, especially the requirements for auditing and monitoring licensed sites and design and construction of new sites
- all four councils have measures in place to deal with risks associated with landfill gases
- the councils are effectively managing risks from active licensed landfill sites, which contain older cells.

Areas for improvement:

- VAGO found that the councils are not adequately managing lower-risk sites as they are not consistently complying with requirements under the regulatory framework, particularly around licensing
- there is a lack of prioritising recommended actions according to risk
- some operational practices have been labelled as 'poor', including rehabilitation, odour management and inspection processes
- in annual monitoring reports, some of the audited councils have been identified as compliant when this is not supported by evidence
- legacy risks, especially gas and leachate, as well as site rehabilitation are not being managed effectively.

VAGO recommendations include:

- councils better identify, prioritise and address all responsibilities under the landfill regulatory framework, including being more progressive in rehabilitating active sites, assessing and managing risks at closed sites and planning to meet anticipated rehabilitation and after-care costs
- councils work closely with EPA appointed auditors and landfill experts to effectively prioritise and address risk by increasing in-house landfill expertise
- councils address the recommendations from environmental audits and other landfill reviews, ensuring that risks are prioritised and implemented according to a time line
- councils need to improve their internal processes, in particular their risk and audit systems and their inspection systems.

The role of EPA as regulator

The VAGO Report also makes an assessment of the EPA's role in regulating and overseeing site compliance with landfill standards and regulations. VAGO found that the EPA has improved its administration of the regulatory framework to heighten compliance. However, VAGO found that the EPA is still failing to comprehensively meet all of its regulatory requirements, particularly with regard to implementation of the new reforms.

What the EPA have done well:

- the EPA has a prioritised risk-based framework in place that is particularly effective in regard to licensed landfills
- high and very high risks are being managed effectively in relation to active landfills and closed cells at active landfill sites
- the EPA has taken a more active approach to compliance and enforcement activities since the 2010 reforms, especially with regard to high risks.

Areas for improvement:

- the EPA's landfill reform process has been fragmented and slow resulting in several key initiatives to address legacy risks not yet being effectively implemented
- the EPA currently uses the same landfill licence conditions for all landfills which do not reflect site-specific high non-compliance risks
- there have been several examples of inconsistent implementation of remedies and contrasting decisions about what remedy should be applied.

VAGO recommendations include:

- the EPA identifies and prioritises the key non-compliance and emerging risks for targeted action by reviewing its landfill information. These should then be identified in its annual compliance plan, which should assess the effectiveness of the action against measures and outcomes
- the efficacy of the current landfill licence requirements is reviewed. This should include developing additional licence conditions as required on a site-by-site basis
- the EPA implements compliance and environmental auditing reporting requirements that include risk-based prioritisation. Reporting should be based on likelihood and severity of impact.

The importance of an effective risk management framework for landfill sites

VAGO's report highlights the importance of an effective framework to manage landfill risks. Maddocks has developed a risk management framework, which can be used by councils and the EPA in the context of landfill risks. The framework takes into account the regulatory framework applicable to landfill sites, including the compliance obligations imposed under the framework, as well as the tools to mitigate risks available to both the regulated entities (i.e. councils) and the regulator (EPA). The development of a risk management framework for landfills can provide local government with an integrated approach which balances the technical, financial and legal objectives of local government.

One component of a risk management framework for councils includes knowing when to exercise rights to challenge unjustified or unreasonable regulatory requirements imposed on currently licensed or closed landfills. Maddocks has advised a number of councils regarding the validity of statutory notices issued by the EPA and rights of review. Our advice has led to negotiated outcomes which better protect the interests of the council, but which also ensure appropriate measures are in place to protect the environment and local communities.

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